

To: All Consumer Lenders Engaged In Payday Lending
From: Charles W. Phillips, Director
Date: July 12, 2001

Re: Utilization of Out of State Banks For Making Consumer Loans

Dear Licensed Lender:

It has come to the attention of the department that certain Indiana lenders who extend credit known as "payday loans" are contemplating or presently engaged in structuring such loans in conjunction with banks. These banks are located in states that either have no annual percentage rate limitation or the allowable rate exceeds what Indiana law provides. These transactions are also known as "rent a charter" loans or the "national bank model" transactional loans.

The legality of lending structured in this manner is being disputed in several states and is presently under the scrutiny and consideration of various federal regulators including the comptroller of the currency, the regulator of national banks. State regulators have begun to question and litigate these transactions under the theory that although out-of-state banks can preempt state laws, the state laws cannot be preempted for the benefit of persons (payday lenders) who are not employees of the bank.

The department is presently studying these transactions and following the events unfolding on the national level. The department intends to announce its position in the near future. This letter is precautionary. Those who participate in these transactions in advance of a formulated position by the department should do so only after weighing all the risks involved.

Please consult your own legal counsel concerning your exposure to future judicial and administrative liability, and for guidance on how to proceed.